IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.745 OF 2000

Shri Vasant Kerurao Jadhav,
Petty Officer in State Excise,
Vikas Nagar, Kiwale,
Tel.Haveli, District Pune. .. Petitioner
(original Petitioner)

v/s.

1. State of Maharashtra
Through the Secreary,
Home Department, Mantralaya,
Mumbai 400 032.
(Summons to be served on
the Additional Government
Pleader, appearing for
State of Maharashtra under
Order 27, Rule 4 of the Code
of Civil Procedure 1908)

2. The Commissioner of the State
Excise, Old Custom House,
Shahid Bhagatsing Marg, Mumbai .. Respondents
(Original Respondents)

Mr.A.V.Anturkar for the petitioner.

Mr.S.R.Nargolkar, Assistant Government Pleader for
the respondents.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 28th April, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

In this writ petition, the petitioner has challenged the legality and correctness of the order dated 30th July, 1999 passed by the Maharashtra Administrative Tribunal. By the said order, the Maharashtra Administrative Tribunal dismissed the original application taken out by the petitioner for direction to the respondents to consider his case

for promotion to the post of Sub-Inspector by not applying the provisions of the new rules for promotion.

2. The petitioner joined the service of the State Excise Department in the year 1967 as the constable. At the time he joined his service, he did not possess the qualification of S.S.C. In the year 1988, he sought promotion to the post of Sub-Inspector, State Excise but the petitioner was not given as he did not possess the educational qualification of S.S.C. He filed writ petition before this court which came to be dismissed on 18.12.1989. The petitioner appears to have passed S.S.C. examination from Karnataka Secondary Education Examination Board in the year 1989. The Governor of Maharashtra made rules known as Inspector, Sub-Inspector, Petty Officer, Driver-Cum-Constable and Constable in the State Excise Department (Recruitment) Rules, 1992 w.e.f. 1.1.1993 and thereafter, the process for promotion to the post of Sub-Inspector of State Excise was taken. Interalia, the condition prescribed in the Rules of 1992 was that the candidate must not have completed 45 years of age. After coming into force of Rules, 1992 when the process for promotion to the post of Sub-Inspector in the State Excise started, the case of the petitioner was not considered as he had already completed the age of 45 years on 8.2.1992. Aggrieved by his non-promotion to the

post of Sub-Inspector in the State Excise Department, the petitoner approached the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal rejected the petitioner's original application observing thus-

> "7. We have considered carefully the ratio laid down by the Supreme Court in Rangaiah's case. We are of the view that in that case the person concerned had a right to be considered for inclusion in the select list in terms of their seniority and eligibility as per rules prevalent than. No such provisions casting an obligation on the department to prepare an annual select list and to effect promotions therefrom has been pointed out. It is not disputed that no vacancies were available from the date the petitioner submitted his certificate about his having passed the S.S.C. until the statutory rules were made on 1.1.93. The learned presenting officer pointed out that the Respondent-State was also prohibited from filling up the post till a common seniority list was prepared. The petitioner has not shown that any person junior to the petitioner was promoted prior to 1.1.1993 superseding the petitioner's claim. The question of limitation apart, we are of the view that no case has been made out by the petitioner to show that he was entitled to the promotion in question by virtue of his seniority and eligibility and has been unlawfully deprived of the said promotion."

3. It is true that the Tribunal was not factually correct in observing that there were no vacancies available from the date the petitioner submitted his certificate about his having passed S.S.C. until the statutory rules were made effective from 1.1.1993. However, the conclusion of the Tribunal does not suffer from any illegality. It is so because for the period from 1988 to 1993, though there were vacancies in the cadre of Sub-Inspector,

the promotions were considered for the first time in the year 1993 after the new recruitment rules came into force. By that time, the petitioner had already attained the age of 45 years and he was not eligible for consideration for promotion to the post of Sub-Inspector of the State Excise.

4. In the circumstances, no interference is called for in the writ petition and it is dismissed with no order as to costs.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)